

Title	<i>Petition to Approve Compromise of Claim and Order Approving Compromise of Claim</i> (revise forms MC-350 and MC-351).
Summary	The proposed revision of form MC-350 would expand and clarify the appropriate uses of the form and specify the alternative dispositions of the proceeds of settlements or judgments available under the law, and present the information the court needs to evaluate a proposed settlement or disposition of proceeds in a logical, coherent, and accessible manner. The proposed revision of the related order, form MC-351, would make the order easier to complete, read, and understand.
Source	Probate and Mental Health Advisory Committee, Hon. Thomas W. Stoevers, Chair
Staff	Douglas C. Miller, Committee Counsel, 415.865.7535, douglas.miller@jud.ca.gov
Discussion	<p>Under Probate Code sections 3600 and 3601, the court must approve a proposed compromise of a minor's disputed claim or a pending action or proceeding involving a minor or an incompetent person when the compromise calls for the payment of money or property for the benefit of that person. The court must approve the terms of the proposed compromise, the reasonable expenses to be paid from the gross proceeds payable for the benefit of the minor or incompetent person, and the disposition of the net proceeds after deduction of the authorized expenses. Form MC-350 is a mandatory form that must be used to request the court's approval. Form MC-351 is the form order that evidences that approval.</p> <p>Court approval is required in another situation where a minor or an incompetent person is a party to a civil action. Probate Code sections 3600 and 3601 also require the court to approve expenses to be paid from the proceeds of a judgment entered for a minor or incompetent person and disposition of the net proceeds of the judgment after payment of those expenses.</p> <p>The current forms do not address the latter situation. However, the questions the court must determine concerning expenses and disposition of net proceeds of the judgment are the same questions it determines when approving the compromise of a claim or a pending action.</p> <p>Where there is a preexisting guardianship or conservatorship of the</p>

estate of the minor or incompetent person, Probate Code sections 3602, subdivisions (b)–(d), and 3604 prescribe the authorized dispositions of the net proceeds of a compromise or judgment payable for the benefit of the minor or conservatee. There are six authorized dispositions of proceeds of a judgment or settlement for a minor and four for an incompetent person. The court may approve one or any combination of more than one disposition.

Where there is no preexisting guardianship or conservatorship, the disposition alternatives are prescribed in Probate Code sections 3602(a), 3604, and 3610–3612. There are ten authorized dispositions of the proceeds of a judgment or settlement for a minor and seven for an incompetent person. Here too, the court may approve one or any combination of more than one of these dispositions.

The current form MC-350 specifies only one disposition alternative, deposit of cash proceeds into a blocked account, an account that requires a court order for a withdrawal. All of the other possible authorized dispositions, including all authorized dispositions of proceeds other than money, are relegated to a one-paragraph “other” category to be completed by the petitioner. These alternatives are not described in the form.

The revised form MC-350 would specify all of the disposition alternatives available under the law where there is and where there is not a preexisting guardianship or conservatorship, and would require the petitioner to designate the alternatives proposed and the amount of money or value of other property to be allocated to each one.

Forms MC-350 and MC-351 would be revised to replace the term “incompetent person” with the term “adult person with a disability.” The former term as used in Probate Code section 3600 et seq. is not precisely defined. Section 3603 says only that the reference to an “incompetent person” includes a person for whom a conservator may be appointed.¹

¹ A conservator of the person may be appointed for an adult or a married or formerly married minor who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter. (Prob. Code, §§ 1800.3(a)(2), 1801(a).) A conservator of the estate may be appointed for an adult who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. (Prob. Code, §§ 1800.3(a)(1), 1801(b).) A conservator of the person and estate may be appointed for a person who satisfies all of the criteria stated above. (Prob. Code, §§ 1800.3(a)(1), 1801(c).)

For such persons the general concept of “incompetency” has been replaced by legal incapacity to enter into certain transactions specified in the Probate Code.²

The Probate and Mental Health Advisory Committee has had a long-term goal to eliminate the term “incompetency” from Probate Code section 3600, et seq., as an obsolete and possibly stigmatizing holdover from the time when a guardianship could be established for an “incompetent” adult before the modern conservatorship law was enacted in 1979.³

Recently introduced legislation sponsored by the State Bar’s Trusts and Estates section would accomplish this objective by amending Probate Code section 3603 to replace “incompetent person” with “person with a disability,” and defining the latter term to include persons described in specified references to federal law and regulations.⁴ The advisory committee proposes to revise forms MC-350 and MC-351 to conform to this provision of the State Bar-sponsored legislation.

The advisory committee also proposes to make other changes to both forms to clarify them and make them easier to fill out and understand, in response to complaints received from plaintiffs’ personal injury attorneys since the forms were adopted effective January 1, 2002. Attorneys representing injured persons are by far the most frequent users of the forms.

² See Probate Code sections 1870–1876 for a description of the transactions for which a person who has a conservator of the estate loses legal capacity.

³ Stats, 1979, ch. 726, §1, effective January 1, 1981. The original conservatorship law was enacted in 1957 as an alternative to the then-existing guardianship law for adults so that protective supervision could be obtained for an adult without the stigma of an adjudication of incompetency. See the 1978 Recommendation Relating to Guardianship-Conservatorship Law of the California Law Revision Commission, author of the 1979 law. (14 Cal. L. Rev. Com. Rep. (1978) 501, at p. 519.) Guardianships for incompetent adults and conservatorships existed side by side from 1958 until the 1979 conservatorship law entirely replaced adult guardianships.

⁴ Assem. Bill No. 1851 (2003–2004 Reg. Sess.), § 4, introduced by Assembly member Harman on January 29, 2004. The federal law and regulations cited in section 3603 as amended by this bill generally describe persons who meet federal definitions of “disability” for purposes of Social Security and certain federal needs-tested disability programs, and are therefore eligible to transfer their property to a special needs trust without jeopardizing their benefits under the federal “safe harbor” provided in 42 USC 1396p(d)(4)(A) and (C). The special needs trust is referred to in Probate Code section 3604 and is one of the most significant disposition alternatives available for the proceeds of judgments or compromises in favor of minors or “incompetent” adults.

The following revisions to form MC-350 are proposed:

1. The text in the “Note” box on page 1 and the name of the form would be changed to reflect application of the form to judgments entered for minors or disabled adults.
2. A new item 4 would be added at page 2 calling for the petitioner to specify whether the claim to be evaluated by the court has not yet been filed, is the subject of a pending action or proceeding that will be compromised without a trial on the merits, or has been or will be reduced to judgment for the claimant after trial.

The parenthetical instructions following each of these alternatives would identify which of the subsequent items in the form must be completed.

- If the claim—an unfiled claim or a pending action or proceeding—will be compromised without a trial on the merits, the petitioner would be required to answer all remaining items in the form.
- If the claim has been or will be reduced to a judgment following a trial, the petitioner would be instructed to complete only those items that pertain to the remaining questions to be determined by the court, the allowable expenses to be deducted from the judgment and the disposition of the net proceeds. These are questions concerning the injuries and medical treatment received, the medical and other expenses and attorney fees to be deducted from the judgment, and the proposed disposition.
- Other items directed at the merits of the claim, such as those requiring the petitioner to provide details about the incident or accident giving rise to the claim, the extent of the injuries and the claimant’s recovery, and settlement payments to others, need not be completed for a claimant whose claim has been tried.

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3. “Incompetent person” would be replaced with the phrase “adult person with a disability” throughout the form.⁵

person with a disability” throughout the form.⁵

4. Item 10 on page 3 of the proposed revised form, item 9 of the existing form, concerns medical expenses to be deducted from the amount of the judgment or compromise payable to the minor or disabled adult. This item would be revised to require the petitioner to state the total amount of all medical liens claimed and the amount of each provider’s claimed medical lien and to explain any differences between the total net amount owed after negotiated reductions, the total amount of medical liens, and the total amount of medical expenses to be paid from the gross judgment or compromise amount. These questions should uncover unsatisfied liens and incurred but unpaid medical expenses.
5. Item 13 of the existing form, item 14 on page 5 of the proposed revised form, would be revised to clarify that the additional expenses other than attorney fees to be specified in that item are all expenses other than medical expenses. The existing item 13 suggests that only expenses incurred by the attorney are to be listed there.
6. Item 15 of the existing form, item 16 on pages 6 and 7 of the proposed revised form, would be modified to specify all of the disposition alternatives available under Probate Code sections 3602, 3604, and 3611 as they would be amended by AB 1851.⁶

⁵ The definition of “person with a disability” in Probate Code section 3603 as it would be amended by AB 1851 is not restricted to a person suffering from a mental disability because the federal definitions cited in the section are not so limited. However, section 9 of AB 1851 would add section 3613 to the Probate Code to provide that a disabled adult who has not been determined by a court to be incapacitated under the Due Process in Competency Determinations Act (Prob. Code, §§ 810–813) would not be required to submit his or her claim or judgment to court review under Article 2 of Chapter 4 of Part 8 of the Probate Code (sections 3610–3612, *Disposition of Money or Other Property Where [there is] No Guardianship or Conservatorship*). Thus an adult who is disabled under federal law for physical reasons but not mentally impaired would have to be the petitioner for a court order under sections 3610–3612 or would have to consent to the petition of another.

⁶ The only significant changes in the disposition alternatives provided in AB 1851 would be removal of the provision authorizing distribution to a county treasurer from Probate Code section 3611(b) to a new subdivision (h), and the addition of a new subdivision (i) of section 3611 authorizing distribution of net proceeds directly to the person with a disability.

Placement of the county treasurer provision in a new subdivision uncovers the disposition alternatives now buried near the end of section 3611(b) following the semicolon. Those alternatives are deposit of money in an insured financial institution or single-premium annuity subject to withdrawal only on court authorization and delivery of property other than money to be held on conditions the court determines to be in the best interest of the minor or person with a disability. It is unclear under existing section 3611(b) whether these alternatives describe options

The petitioner would be asked to check all applicable boxes in item 16 and fill in the amount of money or value of other property to be applied to each proposed disposition alternative. The proposed disposition where there is an existing guardianship or conservatorship would be specified in item 16a. If there is no existing guardianship or conservatorship, item 16b and the appropriate paragraphs under that subdivision would be checked.

7. Item 19 would be added at page 8 of the proposed revised form calling for a complete summary recapitulation of the gross amount of the judgment or compromise, the expenses to be deducted, including medical and other expenses, and attorney fees, the total of all authorized expenses, and the balance available for the claimant after payment of all expenses.
8. Form MC-351, the order approving the compromise or disposition of the proceeds of a judgment, would be revised primarily by highlighting the important dollar fields, including the gross amount of the judgment or settlement for the minor or disabled adult, total attorney fees, total medical and other expenses payable from the gross amount, and the balance of the proceeds available for the claimant after payment of all approved expenses. Other changes to item 6 of the existing order, item 7 of the revised order, would more clearly delineate and separate expenses payable to third parties from those payable as reimbursements to the petitioner or the petitioner's attorney. The revised order, like the revised petition, would

available to the county treasurer after deposit with that officer or are available directly to the petitioner and the court.

This change may conflict with existing section 3611(d), unchanged by AB 1851. Subdivision (d) authorizes delivery of money and other property on conditions the court determines to be in the best interest of the minor or disabled adult, but limits the total value of such property to a maximum of \$20,000. There is no value ceiling in existing or revised subdivision (b) for property other than money delivered on "best interest" conditions.

The proposed revised form treats delivery of all property on "best interest" conditions as subject to the \$20,000 ceiling under section 3611(d). See items 16b(2), (3), and (8) on pages 6 and 7 of the proposed revised form. The advisory committee will monitor the progress of AB 1851 through the Legislature and will recommend clarification of this apparent conflict. The committee will recommend further revision of the form during the year as necessary to conform to the legislation as it is finally enacted.

The new section 3611(i) authorizing delivery of net proceeds directly to the disabled adult claimant is consistent with the definition of disability in Probate Code section 3603 as revised by AB 1851, which is not limited to mental disability or impairment.

refer to an “adult person with a disability” instead of an “incompetent person.”

Attached at pages 8–15 is a copy of the proposed revised form MC-350.

Attached at pages 16–18 is a copy of the proposed revised form MC-351.

Attached at pages 19–25 is a copy of existing form MC-350.

Attached at pages 26–28 is a copy of existing form MC-351.

Attached at pages 29–37 is a copy of AB 1851 as introduced on January 29, 2004.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): </div> <div style="width: 45%;"> FAX NO. (Optional): </div> </div>	FOR COURT USE ONLY DRAFT 3 02/20/04 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	CASE NUMBER:
PETITION TO APPROVE: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input type="checkbox"/> MINOR <input type="checkbox"/> ADULT PERSON WITH A DISABILITY	HEARING DATE: <div style="display: flex; justify-content: space-between;"> DEPT.: TIME: </div>
NOTE: This form is to be used for the compromise of a disputed claim of a minor, the compromise of a pending action or proceeding in which a minor or an adult person with a disability (including a conservatee) is a party, or disposition of the proceeds of a judgment for a minor or adult person with a disability under Code of Civil Procedure section 372 et seq. or Probate Code section 3500 et seq. The person compromising the claim or the action and the minor or adult person with a disability must attend the hearing on this petition unless the court for good cause dispenses with the personal appearance. The court may require the presence and testimony of witnesses, including the attending or examining physician, and other evidence relating to the merits of the claim and the nature and extent of the injury, care, treatment, and hospitalization.	

1. **Petitioner (name):**
2. **Claimant (name):**
 - a. Address:
 - b. Date of birth:
 - c. Age:
 - d. Sex:
 - e. ☐ Minor ☐ Adult person with a disability
3. **Relationship**
 - a. Petitioner's relationship to the claimant (check all applicable boxes):
 - (1) ☐ Parent
 - (2) ☐ Guardian ad litem
 - (3) ☐ Guardian
 - (4) ☐ Conservator
 - (5) ☐ Other relationship (specify):
 - b. (1) Petitioner ☐ is not ☐ is a plaintiff in a suit arising out of the same incident or accident from which the claim arises. (if you answered "is," explain in Attachment 3b the circumstances and whether the petitioner's own claim or its disposition has in any way affected the proposed compromise of the claim that is the subject of this petition.)
 (2) ☐ The claim that is the subject of this petition has been reduced to a judgment for the claimant.
 - c. Petitioner ☐ is not ☐ is a claimant against the recovery of the claimant.
 (If you answered "is," explain in Attachment 3c the circumstances and whether the petitioner's own claim or its disposition has in any way affected the proposed compromise of the claim or the proposed disposition of the proceeds of the judgment that is the subject of this petition.)

CASE NAME: 	CASE NUMBER:
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4. **Nature of claim**

The claim of the minor or adult person with a disability

- a. ☐ has not been filed in an action or proceeding. *(Complete items 5–23.)*
b. ☐ is the subject of a pending action or proceeding that will be compromised without a trial on the merits of the claim.

Name of court:

Case No.:

Trial date:

(Complete items 5–23.)

- c. ☐ has been or will be reduced to a judgment for the claimant after a trial on the merits of the claim.

Judgment filed on *(date)*:

Amount: \$

(Attach a copy of the (proposed) judgment as Attachment 4c and complete items 7–8, 10–11, 14–20, and 22–23.)

5. ☐ **Incident or accident**

The incident or accident occurred as follows:

a. Date and time:

b. Place:

c. Persons involved *(names)*:

☐ Continued on Attachment 5.

6. ☐ **Nature of incident or accident**

The facts, events, and circumstances of the incident or accident are *(describe)*:

☐ Continued on Attachment 6.

7. **Injuries**

The following injuries were sustained by the claimant as a result of the incident or accident *(describe)*:

☐ Continued on Attachment 7.

8. **Treatment**

The claimant received the following care and treatment for the injuries sustained as a result of the incident or accident *(describe)*:

☐ Continued on Attachment 8.

CASE NAME: 	CASE NUMBER:
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9. ☐ **Extent of injuries and recovery**

(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 9.)

- a. ☐ The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.
- b. ☐ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining injuries)*:

☐ Continued on Attachment 9b.

- c. ☐ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries)*:

☐ Continued on Attachment 9c.

10. **Medical expenses**

a. **Totals**

- | | | |
|---|----|--|
| (1) Total charges: | \$ | |
| (2) Total amount paid (whether or not by insurance): | \$ | |
| (3) Total of negotiated reductions, if any: | \$ | |
| (4) Total net amount owed: | \$ | |
| (5) Total amount of medical liens, if any: | \$ | |
| (6) Total amount of medical expenses to be paid from proceeds of settlement or judgment: | \$ | |
- (Explain any differences between items (4), (5), and (6) in Attachment 10.)*

- b. The names of the hospitals, doctors, and other health-care providers that have furnished care and treatment for claimant, the respective charges for such care and treatment, the amounts paid, the amounts of negotiated reductions of the charges, if any, the net amounts owed to each provider, and the amount of the provider's lien, if any, are described below:

- (1) (a) Provider *(name)*:
 (b) Address:
- (c) Care or treatment *(describe)*:
 (d) Amount charged: \$
 (e) Amount paid (whether or not by insurance): \$
 (f) Negotiated reduction, if any: \$
 (g) Net amount owed: \$
 (h) Amount of lien, if any: \$
 (i) Amount to be paid from proceeds of settlement or judgment: \$

- (2) (a) Provider *(name)*:
 (b) Address:
- (c) Care or treatment *(describe)*:
 (d) Amount charged: \$
 (e) Amount paid (whether or not by insurance): \$
 (f) Negotiated reduction, if any: \$
 (g) Net amount owed: \$
 (h) Amount of lien, if any: \$
 (i) Amount to be paid from proceeds of settlement or judgment: \$

☐ Continued on Attachment 10. *(Provide information about additional providers in the above format.)*

CASE NAME: 	CASE NUMBER:
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11. Information about attorney representing or assisting petitioner

- a. (1) ☐ Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other way with respect to the claim asserted *(if this item is checked, go to item 12).*
- (2) ☐ Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted *(if this item is checked, answer questions 11b–11g below).*
- b. The attorney who has represented or assisted petitioner is *(name)*:
- (1) State Bar number:
- (2) Law Firm:
- (3) Address:
- (4) Telephone number:
- c. The attorney ☐ did not ☐ did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier. *(If you answered "did," explain the circumstances in Attachment 11c.)*
- d. The attorney ☐ is not ☐ is representing or employed by any other party or any insurance carrier involved in the matter. *(If you answered "is," identify the party or carrier and explain the relationship in Attachment 11d.)*
- e. The attorney ☐ has not ☐ has received attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment):*
- | <u>From whom (names)</u> | <u>Amounts</u> | <u>Dates</u> |
|--------------------------|----------------|--------------|
| | \$ | |
| | \$ | |
| | \$ | |
- ☐ Continued on Attachment 11e.
- f. The attorney ☐ does not ☐ does expect to receive attorney fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):*
- | <u>From whom (names)</u> | <u>Amounts</u> | <u>Expected Dates</u> |
|--------------------------|----------------|-----------------------|
| | \$ | |
| | \$ | |
| | \$ | |
- ☐ Continued on Attachment 11f.
- g. Petitioner and the attorney ☐ do not ☐ do have an agreement for services provided in connection with the claim giving rise to this petition *(if you answered "do," describe the terms of the agreement including the amount of any contingency fee):*

☐ Continued on Attachment 11g.

CASE NAME: 	CASE NUMBER:
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12. ☐ **Amount and terms of settlement**

- a. ☐ By way of settlement, the following defendants have offered to pay the following sums to the claimant:

<u>Defendants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$

☐ Continued on Attachment 12. **Total: \$** _____

- b. The terms of settlement are as follows (if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included):

☐ Continued on Attachment 12.

13. ☐ **Damage payments to others**

- a. ☐ By way of settlement, no defendant has offered to pay to any other person or persons money damages arising out of the same incident or accident that resulted in injury to the claimant.
- b. ☐ By way of settlement, one or more defendants have offered to pay to another person or persons money damages arising out of the same incident or accident.

- (1) The total amount offered by all defendants to others (specify): \$
- (2) The damage payments are to be apportioned and distributed as follows:

<u>Other plaintiffs or claimants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$

☐ Continued on Attachment 13b.

14. **Attorney fees and expenses (other than medical expenses) to be paid from proceeds of settlement or judgment**

- a. Total amount of attorney's fees for which court approval is requested: \$
(If attorney's fees are requested, a declaration from the attorney explaining the basis for the requested fees must be attached as Attachment 14a.)
- b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of claimant's share of the proceeds of the settlement or judgment:

<u>Items</u>	<u>Payees (names)</u>	<u>Amounts</u>
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

☐ Continued on Attachment 14b.

Total: \$

CASE NAME: 	CASE NUMBER:
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15. Total balance

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment of all requested fees and expenses would be: \$

16. Disposition of balance of proceeds of settlement or judgment

Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

- a. ☐ There is a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in *(name of court)*:

Case No.:

- (1) ☐ \$ _____ of the proceeds in money or other property will be paid or delivered to the guardian of the estate of the minor or the conservator of the estate of the conservatee. The money or other property is specified in Attachment 16a(1).

- (2) ☐ Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest \$ _____ of the money or other property to be paid or delivered under 16a(1) with one or more financial institutions in this state or with a trust company, subject to withdrawal only as authorized by the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 16a(2).

- (3) ☐ Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows *(check all that apply)*:

- (a) ☐ \$ _____ will be invested in a single-premium deferred annuity subject to withdrawal only on order of the court. The terms and conditions of the annuity are specified in Attachment 16a(3).

- (b) ☐ \$ _____ will be deposited in insured accounts in one or more financial institutions in this state from which no withdrawals can be made without a court order. The name, branch, and address of each depository are specified in Attachment 16a(3).

- (c) ☐ \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 16a(3).

- (d) ☐ \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order or judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years, and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the property to be transferred are specified in Attachment 16a(3). A copy of the (proposed) judgment is attached as Attachment 4c.

- (e) ☐ \$ _____ will be transferred to the trustee of a special needs trust under Probate Code sections 3602(d) and 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the property to be transferred are specified in Attachment 16a(3).

- b. ☐ There is no guardianship of the estate of the minor or conservatorship of the estate of the adult person with a disability. Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows *(check all that apply)*:

- (1) ☐ A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability will be appointed. \$ _____ of money and other property will be paid or delivered to the person so appointed. The money or other property are specified in Attachment 16b(1).

- (2) ☐ \$ _____ will be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only upon the authorization of the court. The name, branch, and address of each depository are specified in Attachment 16b(2).

- (3) ☐ \$ _____ will be invested in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court. The terms and conditions of the annuity are specified in Attachment 16b(3).

CASE NAME: _____	CASE NUMBER: _____
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16. Disposition of proceeds of settlement or judgment (continued)

- b. (4) ☐ \$ _____ will be paid or transferred to the trustee of a special needs trust under Probate Code sections 3604 and 3611(c) for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the money or other property to be paid or transferred are specified in Attachment 16b(4).
- (5) ☐ \$ _____ will be paid or delivered to a parent of the minor without bond, upon the terms and under the conditions specified in Probate Code sections 3401–3403. The name and address of the parent and the money or other property to be delivered are specified in Attachment 16b(5). (*Value of minor's entire estate, including the money or property to be delivered, not to exceed \$5,000.*)
- (6) ☐ \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 16b(6).
- (7) ☐ \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order or judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years, and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the money or other property to be transferred are specified in Attachment 16b(7). A copy of the (proposed) judgment is attached as Attachment 4c.
- (8) ☐ \$ _____ will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions and the money or other property are specified on Attachment 16b(8). (*Value not to exceed \$20,000.*)
- (9) ☐ \$ _____ will be deposited with the county treasurer of the County of (*name*): _____
The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).
- (10) ☐ \$ _____ will be paid or transferred to the adult person with a disability. The money or other property is specified on Attachment 16b(10).
- ☐ Continued on Attachment 16.

17. Medi-Cal notice

Notice of the claim or action ☐ has ☐ has not been given under Welfare and Institutions Code section 14124.73.
(*If notice has not been given, explain*):

☐ Continued on Attachment 17.

18. ☐ Statutory liens for special needs trust

Petitioner requests a court order for payment of funds to a special needs trust (*explain how statutory liens under Probate Code section 3604, if any, will be satisfied*):

☐ Continued on Attachment 18.

CASE NAME: 	CASE NUMBER:
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19. Summary

- a. Gross amount of proceeds of settlement or judgment for claimant: \$
- b. Medical expenses to be paid from proceeds of settlement or judgment: \$
- c. Attorney fees to be paid from proceeds of settlement or judgment: \$
- d. Expenses (other than medical) to be paid from proceeds of settlement or judgment: \$ _____
- e. Total of fees and expenses to be paid from proceeds of settlement or judgment *(add (b), (c), and (d))*: \$ (_____)
- f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses *(subtract (e) from (a))*: \$

20. ☐ Additional orders

Petitioner requests the following additional orders *(specify and explain)*:

☐ Continued on Attachment 20.

21. ☐ **Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the incident or accident in which the claimant was injured, the responsibility for the incident or accident, and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation even though the claimant's injuries might in the future appear to be more serious than they are now thought to be.**

22. Petitioner recommends the compromise settlement or the proposed disposition of the proceeds of the judgment for the claimant to the court as being fair, reasonable, and in the best interest of the claimant and requests that the court approve this compromise settlement or proposed disposition and make such other and further orders as may be just and reasonable.

23. Number of pages attached: _____

Date:

<div style="position: absolute; top: 0; right: 0; width: 20px; height: 20px; background: black; transform: rotate(45deg);"></div>	<div style="position: absolute; top: 0; right: 0; width: 20px; height: 20px; background: black; transform: rotate(45deg);"></div>
(TYPE OR PRINT NAME)	(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

<div style="position: absolute; top: 0; right: 0; width: 20px; height: 20px; background: black; transform: rotate(45deg);"></div>	<div style="position: absolute; top: 0; right: 0; width: 20px; height: 20px; background: black; transform: rotate(45deg);"></div>
(TYPE OR PRINT NAME)	(SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): </div> <div style="width: 45%;"> FAX NO. (Optional): </div> </div>	FOR COURT USE ONLY Draft 3 02/20/04 Not approved by the Judicial Council				
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:					
CASE NAME:	CASE NUMBER:				
ORDER APPROVING: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input type="checkbox"/> MINOR <input type="checkbox"/> ADULT PERSON WITH A DISABILITY	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">HEARING DATE:</td> <td style="width: 40%;">DEPT.:</td> </tr> <tr> <td colspan="2" style="height: 40px; vertical-align: top;">JUDICIAL OFFICER:</td> </tr> </table>	HEARING DATE:	DEPT.:	JUDICIAL OFFICER:	
HEARING DATE:	DEPT.:				
JUDICIAL OFFICER:					

1. **Petitioner (name):** _____ has petitioned for court approval of a proposed compromise of a disputed claim of a minor or of a pending action involving a minor or an adult person with a disability, or of a proposed disposition of the proceeds of a judgment for a minor or an adult person with a disability.

2. **Hearing**

Date of hearing: _____ Time: _____ Dept.: _____ Judge: _____

3. **Relationship to claimant**

Petitioner is claimant's (check all applicable boxes):

- a. ☐ Parent.
- b. ☐ Guardian ad litem.
- c. ☐ Guardian.
- d. ☐ Conservator.
- e. ☐ Other (specify): _____

4. **Claimant (name):**

- a. ☐ is a minor.
- b. ☐ is an adult "person with a disability" within the meaning of Probate Code section 3603.

5. **Defendant**

The claim or action to be compromised is asserted, or the judgment is entered, against (name of settling or judgment defendant or defendants (the "payer")):

6. **THE COURT FINDS** that all notices required by law have been given.

7. **THE COURT ORDERS**

- a. The petition is granted and the proposed compromise of claim or action or the proposed disposition of the proceeds of the judgment is approved. The gross amount or value of the settlement or judgment in favor of claimant is \$
- b. The payer shall disburse the proceeds of the settlement or judgment approved by this order in the following manner:
 - (1) **Payment of fees and expenses**
 Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to third parties entitled to receive payment identified in this order, for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of the settlement or judgment:
 - (a) ☐ Attorney fees in the total amount of: \$ payable to (specify): _____

CASE NAME: _____	CASE NUMBER: _____
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7. **THE COURT ORDERS** (continued)

b. (1) (b) ☐ Reimbursement for medical and all other expenses paid by the petitioner or the petitioner's attorney in the total amount of: \$

(c) ☐ Medical, hospital, ambulance, nursing, and other like expenses payable directly to providers as follows, in the total amount of: \$

(i) Payee (*name*):

(A) Address:

(B) Amount: \$

(ii) Payee (*name*):

(A) Address:

(B) Amount: \$

☐ Continued on Attachment 7b(1)(c). (*Provide information about additional payees in the above format.*)

(d) ☐ Other authorized disbursements payable directly to third parties in the total amount of: \$
(*Describe and state the amount of each item, and provide the name and address of each payee:*)

☐ Continued on Attachment 7b(1)(d).

(e) ☐ Total allowance for fees and expenses from the settlement or judgment: \$

(2) **Balance**

The balance of the settlement or judgment available for claimant after payment of all allowed fees and expenses is: \$

The balance shall be disbursed as follows:

(a) ☐ By one or more checks or drafts in the total amount of (*specify*) \$
drawn payable to the order of the petitioner as trustee for the claimant. Each such check or draft must bear an endorsement on the face or reverse that it is for deposit in one or more interest-bearing, federally insured accounts in the name of the petitioner as trustee for the claimant, and no withdrawals may be made from the accounts without a written court order ("blocked account").

(b) ☐ By the following method(s) (*describe each method, including the amount to be disbursed*):

☐ Continued on Attachment 7b(2)(b).

(c) ☐ If money is to be paid to a special needs trust under Probate Code section 3604, all statutory liens in favor of the state Department of Health Services, the state Department of Mental Health, the state Department of Developmental Services, and any city and county in California must first be satisfied by the following method (*specify*):

☐ Continued on Attachment 7b(2)(c).

CASE NAME: _____	CASE NUMBER: _____
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8. ☐ **Further orders of the court concerning blocked accounts**

The court makes the following additional orders concerning any part of the balance ordered to be deposited in a blocked account under item 7b(2)(a) :

- a. Within 48 hours of receipt of a check or draft described in item 7b(2)(a), the petitioner and the petitioner's attorney, if any, must deposit the check or draft in the petitioner's name as trustee for the claimant in one or more blocked accounts at (*specify name, branch, and address of each depository, and the amount of each account*):

☐ Continued on Attachment 8a.

- b. The petitioner and the petitioner's attorney, if any, must deliver to each depository at the time of deposit three copies of the *Order to Deposit Money Into Blocked Account* ("Order"), which is signed contemporaneously with this order, and three copies of the *Receipt and Acknowledgment of Order to Deposit Money Into Blocked Account* ("Receipt"). The petitioner or the petitioner's attorney must file a copy of the *Receipt* with this court within 15 days of the deposit. The sole responsibilities of the petitioner and the petitioner's attorney, if any, are to place the balance in a blocked account or accounts and to timely file a copy of the *Receipt*.

- c. The balance of the proceeds of settlement or judgment deposited in a blocked account or accounts under item 7b(2)(a) may be withdrawn only as follows (*check (1) or (2)*):

(1) ☐ No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judge, and bearing the seal of this court. The money on deposit is not subject to escheat.

(2) ☐ The blocked account or accounts belong to a minor. The minor was born on (*date*):
No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judge, and bearing the seal of this court, until the minor attains the age of 18 years. When the minor attains the age of 18 years, the depository, without further order of this court, is authorized and directed to pay by check or draft directly to the former minor, upon proper demand, all moneys including interest deposited under this order. The money on deposit is not subject to escheat.

9. ☐ **Authorization to execute settlement documents**

The petitioner is authorized to execute settlement documents as follows (*check only one*):

- a. ☐ Upon receipt of the full amount of the settlement sum approved by this order and the deposit of funds, the petitioner is authorized and directed to execute and deliver to the payer a full, complete, and final release and discharge of any and all claims and demands of the claimant by reason of the accident or incident described in the petition and the resultant injuries to the claimant, and a properly executed dismissal with prejudice.
- b. ☐ The petitioner is authorized and directed to execute any and all documents reasonably necessary to carry out the terms of the settlement.
- c. ☐ The petitioner is authorized and directed (*specify*):

☐ Continued on Attachment 9c.

10. Bond is ☐ ordered and fixed in the amount of: \$

☐ dispensed with.

11. A copy of this order shall be served on the payer forthwith.

12. ☐ **Additional orders**

The court makes the following additional orders (*specify*):

☐ Continued on Attachment 12.

Date:

JUDICIAL OFFICER
☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER:

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): _____ makes the following substitution:

1. **Former legal representative** ☐ Party represented self ☐ Attorney (name):
2. **New legal representative** ☐ Party is representing self* ☐ Attorney
 - a. Name: _____
 - b. State Bar No. (if applicable): _____
 - c. Address (number, street, city, ZIP, and law firm name, if applicable): _____
 - d. Telephone No. (include area code): _____
3. The party making this substitution is a ☐ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify): _____

*NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES		
<ul style="list-style-type: none"> • Guardian • Conservator • Trustee 	<ul style="list-style-type: none"> • Personal representative • Probate fiduciary • Corporation 	<ul style="list-style-type: none"> • Guardian ad litem • Unincorporated association
<p>If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.</p>		

NOTICE TO PARTIES WITHOUT ATTORNEYS A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.
 Date: _____

.....
 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY)
5. ☐ I consent to this substitution.
 Date: _____

.....
 (TYPE OR PRINT NAME)

 (SIGNATURE OF FORMER ATTORNEY)
6. ☐ I accept this substitution.
 Date: _____

.....
 (TYPE OR PRINT NAME)

 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

CASE NAME: 	CASE NUMBER:
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PROOF OF SERVICE BY MAIL
Substitution of Attorney – Civil

Instructions: After having all parties served by mail with the Substitution of Attorney–Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney–Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and **not a party to this cause**. I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify)*:

2. I served the Substitution of Attorney–Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.

(1) Date of mailing:

(2) Place of mailing *(city and state)*:

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....
(TYPE OR PRINT NAME)



(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served:

b. Address *(number, street, city, and ZIP)*:

c. Name of person served:

d. Address *(number, street, city, and ZIP)*:

e. Name of person served:

f. Address *(number, street, city, and ZIP)*:

g. Name of person served:

h. Address *(number, street, city, and ZIP)*:

i. Name of person served:

j. Address *(number, street, city, and ZIP)*:

☐ List of names and addresses continued in attachment.

1. PLEASE TAKE NOTICE that *(name of withdrawing attorney)*:
moves under California Code of Civil Procedure section 284(2) and California Rules of Court, rule 376, for an order permitting the attorney to be relieved as attorney of record in this action or proceeding.
2. A hearing on this motion to be relieved as counsel will be held as follows:

a.	Date:	Time:	Dept.:	Room:
----	-------	-------	--------	-------

3. This motion is supported by the accompanying declaration, the papers and records filed in this action or proceeding, and the following additional documents or evidence (*specify*):

4. The client presently represented by the attorney is

- a. ☐ an individual.
- b. ☐ a corporation.
- c. ☐ a partnership.
- d. ☐ an unincorporated association.
- e. ☐ a guardian.
- f. ☐ a conservator.
- g. ☐ a trustee.
- h. ☐ a personal representative.
- i. ☐ a probate fiduciary.
- j. ☐ a guardian ad litem.
- k. ☐ other (specify):

Form Adopted for Mandatory Use
Judicial Council of California
MC-051 [New July 1, 2000]

**NOTICE OF MOTION AND MOTION
TO BE RELIEVED AS COUNSEL—CIVIL**

CASE NAME: _____	CASE NUMBER: _____
---------------------	-----------------------

NOTICE TO CLIENT

If this motion to be relieved as counsel is granted, your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- | | | |
|-----------------|-----------------------------|---------------------------------|
| • A guardian | • A personal representative | • A guardian ad litem |
| • A conservator | • A probate fiduciary | • An unincorporated association |
| • A trustee | • A corporation | |

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

5. If this motion is granted and a client is representing himself or herself, the client will be solely responsible for the case.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, you will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

6. If this motion is granted, the client must keep the court informed of the client's current address.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, the court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

Date:

(TYPE OR PRINT NAME)



 (SIGNATURE OF ATTORNEY)
 Attorney for (name):

ASSEMBLY BILL

No. 1851

Introduced by Assembly Member Harman

January 29, 2004

An act to amend Sections 3600, 3601, 3602, 3603, 3604, 3610, 3611, and 3612 of, and to add Section 3613 to, the Probate Code, relating to incapacity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1851, as introduced, Harman. Incapacity: protective proceedings.

(1) Existing law provides for the disposition of certain funds held for the benefit of a minor or incompetent person.

This bill would revise and recast those provisions, and would replace the term “incompetent person” with the term “person with a disability,” as defined. The bill would make various technical, nonsubstantive changes to those provisions.

(2) Existing law provides that specified funds held for the benefit of a minor or incompetent person may be ordered by the court to be paid to a special needs trust.

This bill would permit a parent, guardian, conservator, or other interested person to instead petition the probate court to establish that special needs trust, if a specified condition is met.

(3) As a result of certain protective proceedings, existing law requires the court to have continuing jurisdiction over the money and property paid, delivered, deposited, or invested for a minor until that minor reaches 18 years of age.

This bill would additionally require the court to maintain continuing jurisdiction of the money and property of an individual who meets the

definition of a person with a disability, as defined, after he or she reaches 18 years of age, until terminated by the court.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3600 of the Probate Code is amended to
2 read:

3 3600. This ~~article~~ *chapter* applies whenever both of the
4 following conditions exist:

5 (a) A court ~~approves~~ (1) *approves* a compromise of, or the
6 execution of a covenant not to sue on or a covenant not to enforce
7 judgment on, a minor's disputed claim ~~or~~, (2) approves a
8 compromise of a pending action or proceeding to which a minor
9 or ~~incompetent~~ person *with a disability* is a party, or (3) gives
10 judgment for a minor or ~~incompetent~~ person *with a disability*.

11 (b) The compromise, covenant, or judgment provides for the
12 payment or delivery of money or other property for the benefit of
13 the minor or ~~incompetent~~ person *with a disability*.

14 SEC. 2. Section 3601 of the Probate Code is amended to read:

15 3601. (a) The court making the order or giving the judgment
16 referred to in Section 3600, as a part thereof, shall make a further
17 order authorizing and directing that ~~such~~ reasonable expenses
18 ~~(medical, medical or otherwise and including reimbursement to a~~
19 ~~parent, guardian, or conservator)~~ *conservator*, costs, and
20 attorney's fees, as the court shall approve and allow therein, shall
21 be paid from the money or other property to be paid or delivered
22 for the benefit of the minor or ~~incompetent~~ person *with a disability*.

23 (b) The order required by subdivision (a) may be directed to the
24 following:

25 (1) A parent of the minor, the guardian ad litem, or the guardian
26 of the estate of the minor or the conservator of the estate of the
27 ~~incompetent~~ person *with a disability*.

28 (2) The payer of any money to be paid pursuant to the
29 compromise, covenant, or judgment for the benefit of the minor
30 or ~~incompetent~~ person *with a disability*.

31 SEC. 3. Section 3602 of the Probate Code is amended to read:

32 3602. (a) If there is no guardianship of the estate of the minor
33 or conservatorship of the estate of the ~~incompetent~~ person *with a*

1 *disability*, the remaining balance of the money and other property
2 ~~(after, after~~ payment of all expenses, costs, and fees as approved
3 and allowed by the court under Section ~~3601~~ 3601, shall be paid,
4 delivered, deposited, or invested as provided in Article 2
5 (commencing with Section 3610).

6 (b) Except as provided in subdivisions (c) and (d), if there is a
7 guardianship of the estate of the minor or conservatorship of the
8 estate of the ~~incompetent~~ person *with a disability*, the remaining
9 balance of the money and other property ~~(after, after~~ payment of
10 all expenses, costs, and fees as approved and allowed by the court
11 under Section ~~3601~~ 3601, shall be paid or delivered to the
12 guardian or conservator of the estate. Upon application of the
13 guardian or conservator, the court making the order or giving the
14 judgment referred to in Section 3600 or the court in which the
15 guardianship or conservatorship proceeding is pending may, with
16 or without notice, make an order that all or part of the money paid
17 or to be paid to the guardian or conservator under this subdivision
18 be deposited or invested as provided in Section 2456.

19 (c) Upon ex parte petition of the guardian or conservator or
20 upon petition of any person interested in the guardianship or
21 conservatorship estate, the court making the order or giving the
22 judgment referred to in Section 3600 may for good cause shown
23 order one or more of the following:

24 (1) That all or part of the remaining balance of money not
25 become a part of the guardianship or conservatorship estate and
26 instead be deposited in an insured account in a financial institution
27 in this state, or in a single-premium deferred annuity, subject to
28 withdrawal only upon authorization of the court.

29 (2) If there is a guardianship of the estate of the minor, that all
30 or part of the remaining balance of money and other property not
31 become a part of the guardianship estate and instead be transferred
32 to a custodian for the benefit of the minor under the California
33 Uniform Transfers to Minors Act, Part 9 (commencing with
34 Section 3900).

35 (3) That all or part of the remaining balance of money and other
36 property not become a part of the guardianship estate and, instead,
37 be transferred to the trustee of a trust which is either created by, or
38 approved of, in the order or judgment described in Section 3600.
39 This trust shall be revocable by the minor upon attaining ~~the age~~
40 *of 18 years of age*, and shall contain other terms and conditions,

1 including, but not limited to, terms and conditions concerning
2 trustee's accounts and trustee's bond, as the court determines to be
3 necessary to protect the minor's interests.

4 (d) Upon petition of the guardian, conservator, or any person
5 interested in the guardianship or conservatorship estate, the court
6 making the order or giving the judgment referred to in Section
7 3600 may order that all or part of the remaining balance of money
8 not become a part of the guardianship or conservatorship estate
9 and instead be paid to a special needs trust established under
10 Section 3604 for the benefit of the minor or ~~incompetent~~ person
11 *with a disability*.

12 (e) If the petition is by a person other than the guardian or
13 conservator, notice of hearing on a petition under subdivision (c)
14 shall be given for the period and in the manner provided in Chapter
15 3 (commencing with Section 1460) of Part 1.

16 (f) Notice of the time and place of hearing on a petition under
17 subdivision (d), and a copy of the petition, shall be mailed to the
18 State Director of Health Services, the Director of Mental Health,
19 and the Director of Developmental Services at the office of each
20 director in Sacramento at least 15 days before the hearing.

21 SEC. 4. Section 3603 of the Probate Code is amended to read:

22 3603. Where reference is made in this chapter to
23 ~~“incompetent person”~~ a “*person with a disability*,” the reference
24 shall be deemed to include ~~“a person for whom a conservator may~~
25 ~~be appointed.”~~ *the following persons:*

26 (a) *A person who meets the definition of disability as defined in*
27 *Section 1382c(a)(3) of Title 42 of the United States Code, or as*
28 *defined in Section 416(i)(1) of Title II of the federal Social Security*
29 *Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that*
30 *act, as set forth in Parts 416.905 and 416.906 of Title 20 of the*
31 *Federal Code of Regulations.*

32 (b) *A person who meets the definition of disability as defined in*
33 *paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title*
34 *II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and*
35 *regulations implementing that act, as set forth in Part 404.1505 of*
36 *Title 20 of the Federal Code of Regulations.*

37 (c) *A minor who meets the definition of disability, as set forth*
38 *in Part 416.906 of Title 20 of the Federal Code of Regulations.*

39 (d) *A person with a developmental disability, as defined in*
40 *Section 4512 of the Welfare and Institutions Code.*

1 ~~(e) A person for whom a conservator may be appointed.~~

2 SEC. 5. Section 3604 of the Probate Code is amended to read:

3 3604. (a) ~~(1)~~ If a court makes an order under Section 3602
4 or 3611 that money of a minor or ~~incompetent~~ person *with a*
5 *disability* be paid to a special needs trust, the terms of the trust shall
6 be reviewed and approved by the court and shall satisfy the
7 requirements of this section. The trust is subject to continuing
8 jurisdiction of the court, and is subject to court supervision to the
9 extent determined by the court. The court may transfer jurisdiction
10 to the court in the proper county for commencement of a
11 proceeding as determined under Section 17005.

12 ~~(2) If the court referred to in subdivision (a) could have made~~
13 ~~an order under Section 3602 or 3611 to place that money into a~~
14 ~~special needs trust, but that order was not requested, a parent,~~
15 ~~guardian, conservator, or other interested person may petition a~~
16 ~~court that exercises jurisdiction pursuant to Section 800 for that~~
17 ~~order. In doing so, notice shall be provided pursuant to~~
18 ~~subdivisions (e) and (f) of Section 3602, or subdivision (c) of~~
19 ~~Section 3611, and that notice shall be given at least 15 days before~~
20 ~~the hearing.~~

21 (b) A special needs trust may be established and continued
22 under this section only if the court determines all of the following:

23 (1) That the minor or ~~incompetent~~ person *with a disability* has
24 a disability that substantially impairs the individual's ability to
25 provide for the individual's own care or custody and constitutes a
26 substantial handicap.

27 (2) That the minor or ~~incompetent~~ person *with a disability* is
28 likely to have special needs that will not be met without the trust.

29 (3) That money to be paid to the trust does not exceed the
30 amount that appears reasonably necessary to meet the special
31 needs of the minor or ~~incompetent~~ person *with a disability*.

32 (c) If at any time it appears (1) that any of the requirements of
33 subdivision (b) are not satisfied or the trustee refuses without good
34 cause to make payments from the trust for the special needs of the
35 beneficiary, and (2) that the State Department of Health Services,
36 the State Department of Mental Health, the State Department of
37 Developmental Services, or a county or city and county in this state
38 has a claim against trust property, that department, county, or city
39 and county may petition the court for an order terminating the
40 trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

SEC. 6. Section 3610 of the Probate Code is amended to read:

3610. When money or other property is to be paid or delivered for the benefit of a minor or ~~incompetent~~ person *with a disability* under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the ~~incompetent~~ person *with a disability*, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

SEC. 7. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited ~~with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or~~

1 ~~deposit of state funds set forth in Chapter 5 (commencing with~~
2 ~~Section 16640) of Part 2 of Division 4 of Title 2 of the Government~~
3 ~~Code, the investment or deposit of county funds set forth in~~
4 ~~Chapter 4 (commencing with Section 53600) of Part 1 of Division~~
5 ~~2 of Title 5 of the Government Code, or as authorized under~~
6 ~~Chapter 6 (commencing with Section 2400) of Part 4 of this code;~~
7 ~~or~~ in an insured account in a financial institution in this state, or in
8 a single-premium deferred annuity, subject to withdrawal only
9 upon the authorization of the court, and that the remaining balance
10 of any other property delivered or to be delivered be held on
11 conditions the court determines to be in the best interest of the
12 minor or ~~incompetent~~ person *with a disability*.

13 (c) After a hearing by the court, that the remaining balance of
14 any money *and other property* be paid to a special needs trust
15 established under Section 3604 for the benefit of the minor or
16 ~~incompetent~~ person *with a disability*. Notice of the time and place
17 of the hearing and a copy of the petition shall be mailed to the State
18 Director of Health Services, the Director of Mental Health, and the
19 Director of Developmental Services at the office of each director
20 in Sacramento at least 15 days before the hearing.

21 (d) If the remaining balance of the money and other property
22 to be paid or delivered does not exceed twenty thousand dollars
23 (\$20,000) in value, that all or any part of the money and other
24 property be held on any other conditions the court in its discretion
25 determines to be in the best interest of the minor or ~~incompetent~~
26 person *with a disability*.

27 (e) If the remaining balance of the money and other property to
28 be paid or delivered does not exceed five thousand dollars (\$5,000)
29 in value and is to be paid or delivered for the benefit of a minor,
30 that all or any part of the money and the other property be paid or
31 delivered to a parent of the minor, without bond, upon the terms
32 and under the conditions specified in Article 1 (commencing with
33 Section 3400) of Chapter 2.

34 (f) If the remaining balance of the money ~~or~~ *and* other property
35 to be paid or delivered is to be paid or delivered for the benefit of
36 the minor, that all or any part of the money and other property be
37 transferred to a custodian for the benefit of the minor under the
38 California Uniform Transfers to Minors Act, Part 9 (commencing
39 with Section 3900).

(g) That the remaining balance of the money ~~or~~ and other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(h) *That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.*

(i) *That the remaining balance of the money and other property be paid or delivered to the person with a disability.*

SEC. 8. Section 3612 of the Probate Code is amended to read:

3612. (a) Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches ~~the age of 18~~ years of age.

1 *(b) Notwithstanding subdivision (a), the trust of an individual*
2 *who meets the definition of a person with a disability under*
3 *subdivision (c) of Section 3603 and who reaches 18 years of age,*
4 *shall continue and be under continuing court jurisdiction until*
5 *terminated by the court.*

6 SEC. 9. Section 3613 is added to the Probate Code, to read:

7 3613. A disabled adult who has not been adjudicated
8 incapacitated under Part 17 (commencing with Section 810) of
9 Division 2 need not comply with this article.

